

Notice of Allowability	Application No.	Applicant(s)	
	09/412,408	FOLEY ET AL.	
	Examiner	Art Unit	
	CHARLES C. AGWUMEZIE	3685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to communication filed on 08/15/08.
2. ☒ The allowed claim(s) is/are 1-15.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>4/14/08</u> 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ 7. <input type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____ |
|--|--|

Continuation of Attachment(s) 3. Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date: see continuation sheet.

04/09/01; 03/29/02; 06/27/02; 12/09/03 and 04/14/08

DETAILED ACTION

Allowable Subject Matter

1. Claims 1-15 is allowed pursuant to the BPAI's decision on rehearing dated February 14, 2008 and June 19, 2008 and reversal of the Examiner's § 103 rejections of claims 1-15. The Appellant adopted the Board's suggested amendment to claim 1 in the amendment filed April 14, 2008 overcoming the 35 U.S.C. §112 rejection and adopted the second Board's suggested amendment to claim 4 in the reply filed August 15, 2008. Accordingly claims 1-15 are allowed.

2. The following is an examiner's statement of reasons for allowance:

The closest prior art of record is U.S. Patent No. 5,924,082 to Silverman et al.

- According to the BPAI's decision on request for rehearing dated June 19, 2008, the rejection of claims 1 through 15 under 35 U.S.C. § 103(a) as obvious over Silverman and Tilfors remains not sustained.
- The rejection of claims 16 through 19 and 26 through 29 under 35 U.S.C. § 103(a) as obvious over Silverman remains sustained.
- The rejection of claims 20 through 23 under 35 U.S.C. § 103(a) as obvious over Silverman and McCausland remains sustained.
- The rejection of claims 24 and 25 under 35 U.S.C. § 103(a) as obvious over Silverman and Ferstenberg remains sustained.

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3. Claims 1-5 is allowed. Claims 16-29 are cancelled.
4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. The prior arts made of record and not relied upon is considered pertinent to applicants disclosure.
 - Korhammer et al (U.S. Patent No. 6,278,982)
 - Lupien et al (U.S. Patent No. 5,101,353)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles C. Agwumezie whose number is **(571) 272-6838**. The examiner can normally be reached on Monday – Friday 8:00 am – 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Calvin Hewitt** can be reached on **(571) 272 – 6709**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charlie C Agwumezie/
Examiner, Art Unit 3685
August 29, 2008

/Calvin L Hewitt II/
Supervisory Patent Examiner, Art Unit 3685